

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1634 of 1999

In

SPECIAL CIVIL APPLICATION No. 449 of 1994

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MS.JUSTICE H.N.DEVANI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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KN PAREKH & 3 - Appellant(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR KB PUJARA with MR CHETAN K PANDYA for Appellant(s) : 1 - 4.

MR DIPEN DESAI, AGP for Respondent(s) : 1-2.

MR MUKUL SINHA for Respondent(s) : 3-6.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 13/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

The appellants, the petitioners in Special Civil Application No.449/1994 have preferred the present

Appeal under Clause 15 of the Letters Patent against the common judgment and order dated 27th October, 1999 passed by the learned Single Judge in so far as the Special Civil Application No.449/1994 is dismissed.

The dispute relates to the interse seniority amongst two batches of the Range Forest Officers. The appellants are the Rangers (redesignated as Range Forest Officers) recruited in the year 1980 and appointed as such in the month of March, 1981. The other set of Rangers, the respondents Nos.3 to 6 (hereinafter referred to as, **"the contesting respondents"**) were selected in the year 1979 and were appointed as such in the month of April, 1981. Since their appointment the appellants were considered senior to the contesting respondents. However, in the seniority list as on 1st January, 1991 published on 3rd February, 1994, the contesting respondents were placed above the appellants. This was done pursuant to the instructions issued by the State Government on 29th September, 1993. By the said instructions dated 29th September, 1993, the Principal Chief Conservator of Forests was directed to place the contesting

respondents above the appellants in the matter of seniority of Range Forest Officers. Feeling aggrieved, the appellants had preferred the above Special Civil Application No.449/1994 which has come to be dismissed by the learned Single Judge. The learned Single Judge has held that the impugned instructions were issued by the State Government on the sound principle of seniority and has upheld the same.

The rules relevant for the purpose of deciding this Appeal are : (1) The Rangers (Subordinate Forest Service) Recruitment Rules, 1969 (hereinafter referred to as, **"the Rules of 1969"**); (2) the Rangers (Subordinate Forest Service Recruitment Examination) Rules, 1974 (hereinafter referred to as, **"the Rules of 1974"**); and (3) the Rangers (Subordinate Forest Service Recruitment Examination Amendment) Rules, 1979 (hereinafter referred to as, **"the Rules of 1979"**).

The appointment to the post of Rangers in the Subordinate Forest Service in the State of Gujarat

was governed by the Rules of 1969. Rules 9, 10, 13 and 14 thereof, which are relevant for the purpose of the present Appeal, read as under :

Rule-9: The selected candidate shall be required to undergo practical training in the Forest for a period of eight weeks. During the period of practical training the candidate shall receive stipend and travelling allowance, as the Government may, from time to time, fix.

Rule-10: The candidate finally selected will be required to undergo training for the Rangers Course at the Northern Forest Rangers College, Dehradun or Southern Forest Rangers College, Coimbatore for a period of two years.

Rule-13: On successful completion of the Training Course from the Rangers College, the candidate shall be appointed as a Ranger if he passes with higher standard certificate and as a Forester if he passes with lower standard certificate.

Rule-14: The seniority of the Rangers shall be governed by their respective ranks in the final examination, irrespective of the date of joining the service.

While the Rules of 1969 were in operation, the Government of Gujarat has, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, framed the Rules of 1974. Rules 17, 18, 21 and 22 thereof, which are relevant for the purpose of the present Appeal, read as under:

Rule-17: The candidates mentioned in Rule 16 who produce the medical certificate of fitness and pass the walking test shall be required to undergo practical training in the forest for a period of eight weeks.

Rule-18: The candidate shall, during the period of practical training, receive stipend and traveling allowance as the Government may fix from time to time. They shall also be required to undergo training for the Rangers Course at the Northern Forest College (sic: Dehradun or Southern Forest College), Coimbatore for a period of 2 years.

Rule-21: On successful completion of the training course from the Rangers' College, the candidate shall be appointed as a Ranger if he passes with higher standard certificate and as Forester if he passes with lower standard certificate.

Rule-22: The seniority of the Rangers shall be governed by their respective ranks in the final examination at the Rangers College irrespective of the date of joining the service.

The Rules of 1974 came to be amended by the Rules of 1979. By the said amendment a material alteration was made in connection with the eligibility of the candidate for appointment to the post of Ranger. The educational qualification prescribed under the Rules of 1969 and 1974 was that of **"intermediate examination of any recognised university or the equivalent examination"**. The same

was raised by the Rules of 1979 to **“a Bachelor's Degree in Science or Agriculture of university recognised by the Government of Gujarat”**.

The appellants who were graduates were selected for appointment to the post of Ranger in the year 1980 i.e. after the amendment made by the Rules of 1979. After their selection and practical training they were sent for the training in Rangers Course at the Central Forest Rangers College, Chandrapur. The appellants, after taking the training in Rangers Course for one year and after taking the examination, were appointed as Rangers by order dated 9th February, 1981 subject to their passing the Rangers Course with the higher standard certificate.

The contesting respondents were under-graduates selected for appointment as Rangers in the year 1979 under the Rules of 1974. After their selection, initial training and final selection, they were sent for training at Rangers College, Rajpipla of a duration of two years. They were, by order dated 16th March, 1981, appointed as Rangers on condition that

they shall pass the Rangers Course with higher standard certificate. Pursuant to their appointment order they joined the service in the month of April, 1981. Ever since their appointment, they were treated junior to the appellants. Feeling aggrieved by their relative position on seniority list they made representation to the State Government to assign them seniority above the appellants. The said request was turned down by the State Government under its letter dated 12th October, 1982. The decision of the State Government was conveyed to the contesting respondents by the Principal Chief Conservator of Forests on 5th March, 1987. It appears that the said decision of the State Government was not challenged further by any of the contesting respondents or any other aggrieved person. However, a representation afresh came to be made pursuant to which, the aforesaid decision dated 12th October, 1982 was reconsidered and a decision afresh as conveyed by the impugned order dated 29th September, 1993 was taken.

By the impugned order the State Government directed the Principal Chief Conservator of Forests

to consider the contesting respondents senior to the appellants on the premise that Rule 14 of the Rules of 1969 governed the interse seniority amongst the Rangers who passed the Rangers Course at the same time. However, it did not determine the interse seniority of the Rangers passing the Rangers Course at different times. The contesting respondents having been selected in the year 1979 for appointment as Rangers and the appellants having been selected for appointment as Rangers later irrespective of the date of their passing the Rangers Course, the appellants were required to be placed below the contesting respondents for the purpose of seniority. In other words, the seniority was directed to be maintained on the basis of the initial selection or on the basis of the commencement of the Rangers Course. It is this order which has affected the seniority of the appellants direly. The appellants have been pushed down below the contesting respondents. As a result, the contesting respondents have received further promotion as Assistant Conservator of Forests long before the appellants could be offered such promotion.

Mr.Pujara has assailed the judgment of the learned Single Judge. In the submission of Mr.Pujara the learned Single Judge has failed to appreciate the matter at dispute and has wrongly dismissed the petition preferred by the appellants. He has submitted that it is true that Rule 14 of the Rules of 1969 and Rule 22 of the Rules of 1974 govern the interse seniority of the Rangers who pass the examination in the same batch. He has submitted that in absence of any rule to the contrary the selected candidate passing the Rangers Course earlier and appointed earlier shall get the seniority over the later batch on the principle of continuous officiation. He has submitted that considering the said universal principle of seniority the appellants who were appointed in the month of February, 1981 and who had joined the service in the month of March, 1981 should get the placement above the contesting respondents who were appointed as Rangers later and who joined the service as Rangers later. In support of his submissions, Mr.Pujara has relied upon the judgments of the Hon'ble Supreme Court in the matters

of **Suraj Parkash Gupta and others etc. v/s. State of Jammu and Kashmir and others** [AIR 2000 SC 2386]; of **Pramod K.Pankaj v/s. State of Bihar and others** [(2004)3 SCC 723]; of **Prafulla Kumar Swain v/s. Prakash Chandra Misra and others** [1993 Supp. (3) SCC 181]; of **D.P.Sharma and others v/s. Union of India and another** [AIR 1989 SC 1071]; of **K.R.Mudgal and others v/s. R.P.Singh and others** [AIR 1986 SC 2086] and of **Dr.Amarjit Singh Ahluwalia v/s. The State of Punjab and others** [AIR 1975 SC 984].

The Appeal is contested by Mr.Sinha. He has referred to paragraphs 21 and 25 of the impugned judgment. He has submitted that the impugned judgment was carried in appeal before the Division Bench and further before the Hon'ble Supreme Court. Both the appellate forums have upheld the impugned judgment passed by the learned Single Judge. He has submitted that the principle laid down by the learned Single Judge has thus been finally approved. The challenge in the present Appeal is, therefore, not sustainable. He has submitted that in any view of the matter the appointment of the appellants as Rangers was

irregular in as much as none of the appellants had undergone two years' training in Rangers Course, a statutory prerequisite for appointment as Rangers. The initial appointment of the appellants thus being irregular, they cannot have a right to seniority from the date of their appointment. He has submitted that had the appellants been given two years' training as required under the Rules of 1969, or of 1974 they could not have acquired the eligibility for appointment as Rangers until the year 1982. The appellants, therefore, could not have been appointed as Rangers prior to 1982. That being the relevant date, the appellants shall be considered junior to the contesting respondents. He has, therefore, supported the impugned order issued by the State Government on 29th September, 1993. He has submitted that the representation made by the contesting respondents was never answered by the State Government and was pending before the State Government. The communication dated 5th March, 1987 issued by the Principal Chief Conservator of Forests was without the authority of law and shall not govern the seniority of the contesting respondents vis-a-vis

the appellants. He has submitted that the principle that seniority is not a vested right has been well-settled and has been consistently operated over the years. The appellants' initial appointment as Rangers made in the year 1981 without undergoing two years' training in Rangers Course as specified by the Rules of 1969, or of 1974 should be considered bad and illegal. Such appointment shall not confer right to seniority over the appellants. In support of his submissions, Mr.Sinha has relied upon the judgments of the Hon'ble Supreme Court in the matters of **Union of India and others v/s. Dr.S.Krishna Murthy and others** [(1989)4 SCC 689]; of **Wing Commander, J.Kumar v/s. Union of India and others** [AIR 1982 SC 1064]; of **Prabhakar and others v/s. The State of Maharashtra and others** [(1976)2 SCC 890]; of **Sanjay K.Sinha-II and others v/s. State of Bihar and others** [(2004)10 SCC 734]; of **Santosh Kumar and others v/s. G.R.Chawla and others** [(2003)10 SCC 513] and of **Prafulla Kumar Das and others v/s. State of Orissa and others** [(2003)11 SCC 614].

Mr.Desai has submitted that it is true that the

appellants were selected after amendment to the Rules of 1974 by the Rules of 1979; that they possess the higher educational qualification of a Bachelor's Degree in Science or Agriculture of a university recognised by the Government of Gujarat as specified in the Rules of 1979. It is also true that the appellants were not sent for training in Rangers Course for two years' duration either at Dehradun or at Coimbatore. However, they were sent for one year's training in Rangers Course at Central Forest Rangers College, Chandrapur. They having passed the Rangers Course with higher standard certificate, they were appointed as the Rangers. He has further submitted that it is also true that the contesting respondents did not possess the higher qualification of a Bachelor's Degree but had passed the intermediate examination as was required under the Rules of 1969 and the Rules of 1974 (before amendment). On their passing the Rangers Course of two years' duration with higher standard certificate, they were appointed as the Rangers.

It is indisputable that the appellants had passed the Rangers Course with higher standard

certificate before the contesting respondents did; that they were appointed prior to the contesting respondents and that they joined the service as Rangers before the contesting respondents did. Thus, on the basis of principle of continuous officiation the appellants shall be considered senior to the contesting respondents. That was the opinion expressed by the State Government through the above referred communication dated 5th March, 1987. By communication dated 5th March, 1987 it was stated that the selected candidates having higher qualification of a Bachelor's Degree in Science were sent for training in Rangers Course for a duration of one year while the contesting respondents who possessed the lesser qualification of intermediate science were required to be given a longer training for two years in Rangers Course. The appellants who had passed the Rangers Course earlier were also appointed earlier. Therefore, they were required to be considered senior to the contesting respondents. This communication dated 5th March, 1987 was not challenged by the contesting respondents or any other aggrieved person. Thus, right since the year 1981 the appellants

enjoyed seniority above the contesting respondents.

Nevertheless, it appears that in the year 1993 when further promotion had become due, the State Government issued impugned order giving the contesting respondents en-block seniority over the appellants on a specious ground that Rule 14 of the Rules of 1969 governed the interse seniority of the Rangers passing the Rangers Course in the same batch. The contesting respondents having commenced their training in the Rangers Course earlier than the appellants they were entitled to seniority over the appellants. Thus, by an executive fiat contained in the impugned order the State Government has altered the rule of seniority. The seniority is now determined from the date of the commencement of the Rangers Course. In our opinion, the said exercise was not permissible. Rule 14 of the Rules of 1969 specifically provided that the seniority of the Rangers shall be governed by the respective ranks in the final examination irrespective of the date of joining the service. Identical is the provision under Rule 22 of the Rules of 1974. Undoubtedly, the

aforesaid rules govern the interse seniority of the selected candidates who complete the Rangers Course with higher standard certificate in the same batch. However, as regards the seniority amongst the Rangers passing the Rangers Course at different times/batches, in absence of any rule to the contrary, in our opinion, the ordinary rule of continuous officiation shall prevail. Hence, the appellants who had completed the training in the Rangers Course with higher standard certificate prior to the contesting respondents, who were appointed as Rangers prior to the contesting respondents and who had joined the service prior to the contesting respondents cannot be considered junior to the contesting respondents. That too, by an executive fiat as has been done in the present case.

In paragraphs 21 and 25 of the judgment, the learned Single Judge has reiterated the settled principles of seniority. We are in complete agreement with the learned Single Judge. However, question here is not that of altering seniority of a Government servant by altering the rule of seniority. As

recorded hereinabove, the seniority granted to the appellants has been altered by an executive instruction issued by the State Government after several years in service. Besides, at no point of time the contesting respondents or any other aggrieved person had challenged the seniority assigned to the appellants.

It is true that the Rules of 1969 as well as the Rules of 1974 require that a candidate selected shall have to undergo practical training of eight weeks. After final selection a candidate would be required to take two years' training at Rangers College either at Dehradun or at Coimbatore. It is equally true that the appellants were not sent for two years' training at the Rangers College either at Dehradun or at Coimbatore but they were given such training at Central Forest College at Chandrapur for a period of one year. We agree that the appellants were not given the required training of two years. But, it is too late in the day to question the same. At no point of time till the date the appointment of the appellants has been questioned on the ground that they had not

acquired the requisite training or that they were not eligible for appointment until they completed the required two years' training in Rangers Course. In absence of such challenge the contesting respondents cannot now be permitted to argue that the appointment of the appellants was illegal or irregular and that they were not entitled to seniority from the date they passed the Rangers Course with higher standard certificate or from the date they were appointed.

For the aforesaid reasons, we hold that the appellants were entitled to seniority from the date of their appointment after passing the Rangers Course with higher standard certificate. Their interse seniority shall be governed by Rule 22 of the Rules of 1974. Similarly, the contesting respondents shall take their seniority from the date they were appointed as Rangers after completing the Rangers Course with higher standard certificate. Their interse seniority shall be governed in accordance with Rule 22 of the Rules of 1974.

We accordingly allow the Appeal, quash and set-aside the impugned judgment and order of the learned Single Judge in so far as the Special Civil Application No.449/1994 is dismissed. The Special Civil Application No.449/1994 is allowed. The impugned order/communication dated 29th September, 1993 issued by the State Government is quashed and set-aside. The further promotion to the post of Assistant Conservator of Forests amongst the appellants and the contesting respondents shall be regulated in accordance with their interse seniority determined in accordance with the above direction. The dates of their deemed promotion shall be worked out in accordance with their seniority. The appellants shall be entitled to the pay fixation and the arrears of salary in accordance with the relevant rules. The parties shall bear their own cost.

Mr.Sinha requests that this order be stayed for a period of six weeks. The request is rejected.

(Ms. R.M.Doshit, J.)

(Harsha Devani, J.)

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